IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7949 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEGJIBHAI D MAKWANA

Versus

ASST LABOUR COMMISSIONER

Appearance:

1. Special Civil Application No. 7949 of 1993

MS KRINA THAKKAR for MR YOGESH S LAKHANI for Petitioner

MR MUKESH R SHAH for Respondent No. 1

MR KM PATEL for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 05/09/2003

ORAL JUDGEMENT

Before adverting to the facts of the present facts, I would like to make reference the few observations made by the Punjab and Haryana High Court in the matter of JAGDISH CHAND V. LABOUR COMMISSIONER AND OTHERS reported in 1995 II LLJ 410. The observations are, therefore, reproduced as under:

"Time has come when the people have started feeling that they have been let down by the two organs of the State and they look upon the Courts with a ray of hope. Common man's faith in the system of dispensation of justice still exists. However, failure of the Courts to undo injustice done to the citizen will shake the confidence of the people. The Courts will have to be more vigilant in the discharge of their duties to safeguard the legal and fundamental rights of the individual. Public Authorities particularly the administrative authorities have developed an attitude of total insensitiveness towards the needs of the people. This has naturally compelled the people to look upon Court for solace and redressal of injustice. No doubt, this has led to an immense increase in the volume of litigation but that should not threaten the Courts and there is no need to accept the specious argument or evolve methodologies to non suit those who are really aggrieved by State action or arbitrariness of public authorities. The Courts have to guard themselves against the allegations of being protector of haves in the society. Denial of relief to the poor and small man on the ground of availability of alternative remedy will not do any good to the society."

Heard learned advocate Ms. Krina Thakkar for the petitioner, learned advocate Mr. Mukesh R Shah appearing on behalf of respondent No.1 and learned advocate Mr. K.M.Patel appearing on behalf of respondent Nos. 2, 3, and 4.

2. In the present petition, Rule has been issued by this court on 1.9.1993. Affidavit-in-reply has been filed by respondent Nos. 2 to 4 and Rejoinder is filed by the petitioner.

3. The brief facts of the present petition is that, petitioner was dismissed from service by the Bank, therefore, petitioner-workman has raised industrial

dispute under Section 2(A) of the Industrial Disputes Act, 1947 ('the Act' for short) before the respondent No.1-Conciliation Officer. The said dispute was raised by letter dated 26.6.1989 which was received by the respondent No.1 on 10.8.1989. Ultimately, the Conciliation Officer has negotiated the dispute between the parties and in his intervention the industrial dispute raised by the petitioner has been settled and the settlement has been made in writing between the parties under Section 12 sub-clause (3) of the Act. On behalf of the respondent Nos. 2 to 4 one G.M.Shinde, Officer in staff department, Union Bank of India, Regional Office, Rajkot, who has been authorised representative of the management, has appeared and signed the settlement on 19.12.1991 and there are two witnesses; one Mr. M.H.Vania and other Mr. V.B.Marvadi whose signatures are in the settlement. Thereafter, settlement has been recorded by the respondent No.1-Conciliation Officer. The settlement has been produced by the petitioner as Annexure-A page 12. According to respondent No.1, after preliminary inquiry, in industrial dispute was found existed between the parties and hence it is admitted in conciliation under Section 12 (3) of the Act. Thereafter, the matter was finally taken in conciliation on 19.12.1991 when both the parties remained present through their authorised representative. After prolong discussion and suggestion made to the parties by the Conciliation Officer, both the parties reached to an understanding and agreed to sign a memorandum of settlement before the Conciliation Officer on the following terms of the settlement:

(1) It is agreed by the management of Union Bank of India, Regional Office, Dr. Yagnik Road, 1st Floor, Radia Building, 1, Jagnath Plot, Rajkot that shri Meghjibhai Danabhai will be taken back in service of Union Bank of India as a Peon in the existing scale as and when he report for duty.

(2) The period of termination from 7.1.1988 to till date he resume duty as a Peon will be treated as dies-non and will not be counted for any purpose.

(3) The workmen Shri Meghjibhai Danabhai Makwana is agreeable to the above terms of settlement and agrees to withdraws his claim for back wages/intervening period from 7.1.1988 to till date he resuming the duty as a Peon.

(4) It is agreed by the workmen Shri Meghjibhai Danabhai Makwana that this settlement fulfills entire demands raised before the Conciliation Officer, Adipur (Kutch) and he will not raise any other claim or any other relief on this account through any other agency/Court.

Thereafter, the settlement which is required to be implemented on or before 18.3.1992 by the respondent Bank is not implemented. Therefore, by letter dated 14.7.1992 at page 15, the petitioner workman requested to the respondent No.1 to take or initiate a proceeding against the respondent Bank under Section 29 of the Act. Thereafter, the petitioner-workman has approached to the officer who has represented the Bank before the Conciliation Officer on 11.3.1992, to implement the settlement dated 19.12.1991 and issue reinstatement order in favour of the petitioner. The copy of the said letter is also sent to the respondent No.1. Then, on 10.4.1992, again the petitioner has written a letter to the Conciliation Officer with a request to take or initiate proceedings for implementation of the settlement against the respondent Bank. Thereafter, a common letter dated 27.4.1992 was written by the petitioner addressed to the Conciliation Officer and respondent Bank with a prayer to implement the settlement or to initiate the proceedings under Section 29 of the Act. The xerox copy of the acknowledgement of the registered AD addressed to the Conciliation Officer and the respondent Bank is annexed by the petitioner. Then on 26.2.1993 a request was made by the petitioner by letter addressed to the Conciliation Officer to initiate the proceedings of prosecution against the respondent Bank under the provisions of Section 29 of the Act. This being the case of the petitioner that inspite of settlement arrived at between the parties before the Conciliation Officer under Section 12(3) of the Act, having the binding effect under the statutory provisions, not implemented by the respondent Bank.

4. The reply given by the Bank is on merits, having two preliminary contentions raised in paragraphs 2 & 3. The first preliminary contention raised by the respondent Nos.2 to 4 Bank is that, so called settlement arrived at between the petitioner and the Bank does not deserve to be entertained as the petitioner has express and specific remedy available under the provisions of the Act, which, in the case pleaded in the petition appears to have been availed by the petitioner and therefore petition does not deserve to be entertained. The second contention in paragraph 3 involve investigation of disputed question of

fact which cannot be undertaken in a proceeding under Article 226 of the Constitution of India. Without prejudice to these two preliminary contentions, the merits have been disclosed in paragraph 4/1 that respondent Bank has issued charge sheet on 7.10.1987 for commission of gross and serious misconduct of not handing over the book bearing receipts issued by the Gujarat Electricity Board; issuing receipts from the said book unauthorisedly and dishonestly to one Shri Rupa Puna and another Shri Nadhabhai and collecting amount as per receipts from the said parties and not depositing or returning the same to the Bank. Ultimately, on the basis of that allegation, after completion of departmental inquiry by order dated 22.9.1986, five increments have been stopped with cumulative effect and thereafter disciplinary authority passed an order of dismissal dated 7.1.1988 and, departmental appeal was also dismissed on 30.9.1988. Thereafter, the respondent Bank has raised the contention that looking to the merits and allegations levelled against the petitioner, it is not a case of reinstatement and, therefore, by letter dated 20.10.1989 necessary papers along with the reply were submitted by the Bank to the Conciliation Officer. The Bank has also raised the contention that Mr. Shinde, an officer in staff department, Regional Office, Rajkot was the only authorised representative to appear on behalf of the Bank and to submit the documents. The said officer has no authority, whatsoever, to negotiate or sign any settlement for an on behalf of the respondent Bank. At page 48, letter dated 17.12.1991, an authority letter has been produced by the respondent Bank. The Bank has also raised contention that Mr. Shinde was not conferred with any power to sign any settlement and, as such, the matter rests only with the Industrial Relation Department, Bombay. Thereafter, the explanation was called from Mr. Shinde by the Bank on 27.12.1991 and reply was given by Mr. Shinde on 28.12.1991. In reply, the contention was raised by Mr. Shinde that he was pressurised by the Conciliation Officer and it was not voluntary settlement and, by some coercive method signature of Mr. Shinde has been obtained and, therefore, he was not responsible for the same. Further contention raised by the respondent Bank is that Industrial Disputes Act (Central) Rules, 1957 are applicable to the respondent Bank and, as per Rule 58(2)(a) of the said Rules, a settlement on behalf of the employer has to be signed by the Manager or other Principal Officer of the Company, duly authorised in that behalf. In paragraph 4/5, the relevant rule has been incorporated by the Bank which suggest that 'in the case of employer, by the employer himself or by his authorised agent, or when the employer is an incorporated company or

other body corporate by the agent, manager or other principal officer of the corporation'. The case of the Bank is that Mr. Shinde was only authorised to appear in conciliation proceedings and had no authority to sign any settlement. The further contention of the Bank is that the settlement is not legal and valid and it is not a settlement in the eye of law. Further averments made in the reply to show that Bank was not inclined to settle the matter looking to the allegations made against the petitioner and, therefore, by letter dated 1.11.1993 which is addressed to the respondent No.1-Conciliation Officer, wherein it is stated that the settlement was not signed by the authorised person, therefore, either to revoke the settlement or to refer the matter for reference to the Labour Court or the Tribunal. One fact has been brought to the notice of this Court by the Bank that, in pursuance to the settlement, a recovery application was filed under Section 33(C) (1) of the Act before the Labour Court which has been dismissed for non-prosecution on 30.10.1992 by the Labour Court, Bhavnagar. Therefore, according to the Bank, when the settlement is not legal and valid and same is not signed by an authorised person and petitioner has been dismissed from service for the serious misconduct relating to dishonesty, therefore, such settlement cannot be enforced against the respondent Bank. The Bank has also having the objection that this Court may not exercise powers for enforcing the settlement when settlement is in dispute by the Bank. Once the dispute has been raised or objection is raised by the Bank against the settlement, then it is burden upon the petitioner to point out how to satisfy this Court that settlement is legal and valid and for that this Court has to exercise the power and to inquire to the merits and disputed question of facts whether Mr. Shinde is an authorised officer or not. Therefore, it is beyond the scope of Article 226 of the Constitution of India and this court is not having jurisdiction to decide such disputed question of facts. All the relevant correspondences from the Conciliation Officer to Mr. Shinde with the Bank and order of dismissal are produced by the Bank along with reply. Letter dated 17.12.1991 at Page 48 signed by the Regional Manager of Regional Office at Rajkot addressed to the Conciliation Officer is quoted as under:

> We authorize Shri G.M.Shinde, Officer, Regional Office, Rajkot to appear in the aforesaid case as a Banks' representative.

5. It is necessary to note at this juncture that the petition is filed by the petitioner on 13.7.1993. This

Court has issued notice on 9.8.1993 made it returnable on 25.8.1993, meaning thereby that notice issued by this Court must have to be reached prior to 25.8.1993 to the respondent Bank. In light of this, certain correspondence is related to some development in respect to the matter. It is necessary to note one important aspect with regard to the settlement dated 19.12.1991 that, in all, five occasions, request is made by the petitioner to the respondent Bank as well as respondent No.1-Conciliation Officer to implement the settlement but the settlement is not implemented by the Bank. Not a single reply is given by the Bank. If the Bank having the case to the effect that from inception the settlement is bad and they know that officer is not authorised, then they should have to immediately react by giving answer to the petitioner that settlement is invalid and not signed by the authorised person, therefore, we are not bound by such settlement, but no such reaction from the respondent Bank in respect to the same inspite of five letters received from the petitioner. It is also necessary to note that inspite of several letters of the petitioner workman no response is given by the Bank and the Bank has not addressed any letter prior to the receipt of notice from this Court to the respondent No.1-Conciliation Officer with a request to revoke the settlement or to refer the matter for adjudication. It was, the first time the efforts have been made after receiving the notice of this petition from the High Court by letter dated 1.11.1993 addressed to the respondent No.1-Conciliation Officer that settlement is not signed by the authorised person. There was some coercive measure adopted by the Conciliation Officer against Mr. Shinde which compelled him to sign the settlement and, therefore, to revoke the settlement or to refer the matter for adjudication. Therefore, the conduct of the respondent Bank is also having important role in present matter in light of various letters written by the petitioner to the Bank. Against that, a Rejoinder has been filed by the petitioner and a contention has been raised while giving reply that this contention is raised by the Bank after a period nine years and settlement which is arrived at between the parties is legal and valid and what action has been taken by the Bank after receiving the reply from Mr. Shinde on 28.12.1991. No details have been produced by the Bank in respect to the fact that what action has been taken by the Bank against Mr. Shinde. The petitioner in Rejoinder also submitted that in respect of contention of the bank that coercive measure has been adopted by the conciliation Officer and threat has been given to sign the settlement. Therefore, these are not bonafide contentions raised by the Bank but

just to avoid responsibility of the settlement the contention has been raised by the respondent Bank. The petitioner has also gave reply that if there was some threat and coercive measure adopted by the respondent No.1 Conciliation Officer and there was no voluntary settlement arrived, then in respect to the allegations made against the respondent No.1 some proceedings must have to be initiated by the Bank or Mr. Shinde in respect to the allegations made against respondent No.1. No steps have been taken by the Bank or Mr. Shinde and, therefore, the petitioner has specifically made it clear that entire story has been cooked up by the respondent Bank. There was a genuine and valid settlement by an authorised representative and, therefore, same is required to be implemented by the respondent Bank as petitioner is out of job since 1988 till date. It is difficult for him to maintain family and, therefore, according to the petitioner, some directions may be issued to the respondents so that they will implement the settlement dated 19.12.1991 with all service benefits including the reinstatement with full back wages of interim period.

6. Learned advocate Mr. Mukesh R Shah appearing on behalf of respondent No.1 has submitted that because of the earthquake the papers in respect to the present petition which were lying in the office of the Conciliation Officer are misplaced and he is not having any material so he may file affidavit of the concerned Conciliation Officer. But he submitted that the story which has been developed by the Bank is just to ignore the responsibility of settlement which is an after thought and he also submitted that a correspondence between Mr. Shinde and the Bank calling the explanation from Shinde by letter dated 27.12.1991 and reply was given on 28.12.1991, then they remained silent up to a period of two years for approaching the Conciliation Officer which shows their conduct and petition was filed in July 1993 and has been cooked up after receiving the notice of this petition by the High Court by the Bank, therefore, these are not bonafide contentions raised by the Bank, these are all after thought and what happened to the memo issued to Mr. Shinde, no details have been given by the respondent Bank. Therefore, according to him the allegations which have been made against the respondent No.1 is false and after thought and therefore, same cannot be considered to decide the validity of the settlement. He also emphasized that if the Conciliation Officer who is a gazetted officer has made any efforts by adopting coercive measures to sign the settlement through the representative of the Bank then immediately they

should have to approach by way of criminal complaint against the Conciliation Officer or to challenge such settlement immediately before the authority, but, no such efforts have been made till date and settlement in question is also not challenged by the respondent Bank till date in any forum either to file criminal complaint against the respondent No.1 or to challenge in higher forum, therefore, according to him the settlement which has been recorded by the Conciliation Officer under Section 12(3) of the Act is legal and valid and binding to the Bank and same is required to be fully implemented by the Bank without any delay on their side.

7. Learned advocate Mr. K.M.Patel appearing on behalf of respondent-Bank has submitted that settlement dated 19.12.1991 is not signed by an authorised representative of the Bank and the same is not legal and valid, therefore, same cannot be enforced in writ jurisdiction. This Court having equitable jurisdiction. If the settlement is implemented it amounts to miscarriage of justice looking to the misconduct committed and found to be proved against the present petitioner. Page 43 is the reply by the Bank before the Conciliation Officer on 28.10.1989. He also submitted that if the settlement is vitiated by fraud it will be again a subject matter of an industrial dispute and enforcing such settlement against the Bank which is not valid in light of the merits of the misconduct levelled against the petitioner. He relied upon the decision of the Apex Court in the case of BROOKE BOND INDIA LTD. V. THE WORKMEN, AIR 1981 SC 1660 to emphasize his submission that if the settlement is signed by unauthorised office bearer of the Union then such settlement held to be invalid by the Apex Court. Similar ideology will apply in the case of the respondent-Bank as an authorised officer has not signed the settlement, therefore, that settlement is not binding to the Bank. The Apex Court has observed as under:

> "Unless the office-bearers who signed the agreement were authorised by the executive committee of the Union to enter into a settlement or the constitution of the Union contained a provision that one or more of its members would be competent to settle a dispute with the management, no agreement between any office-bearer of the Union and the management can be called a settlement as defined in Section 2(p)".

I have perused the aforesaid judgement and

considering the ratio laid down by the Apex Court this judgement is not applicable to the facts of the present case simply on the ground that it relate to the settlement arrived under Section 2(p) of the Act. There is a vast difference between settlement under Section 2(p) and Section 12(3) of the Act. The settlement under Section 2(p) is binding to the signing person and not binding to others, meaning thereby, that settlement under Section 2(p) is binding to the parties alone and not binding to the other person whereas the effect of Settlement arrived under Section 12(3) of the Act is binding to all irrespective of parties, meaning thereby that effect of the settlement under Section 12(3) of the Act is like an award which bind to all existing workmen, employers or even in case of change of employer or change in the workmen it apply to both even in respect of the future workmen and employer also. Therefore, in light of legal effect of Section 12(3) of the Act comparison to Section 2(p) of the Act, the view taken by the Apex Court in aforesaid decision is not applicable to the facts of the present case and therefore, it is not helpful to the submissions made by Mr. K.M.Patel.

8. The second decision which has been relied upon by Mr. Patel is in the case of MAYURAKSHI COTTON MILLS AND OTHERS V. PANCHRA MAYURAKSHI COTTON MILLS EMPLOYEE'S UNION AND OTEHRS, AIR 2000 SC 1206 wherein he is emphasizing the question raised that whether the settlement was unfair, amounts to victimisation, in the petition. The High Court cannot decide or examine such question, better course is to raise industrial dispute and to refer for industrial adjudication.

9. I fail to understand the submissions made by Mr. Patel that on what basis he relied upon the above decisions and ultimately, what he wants to canvas or convey to this Court while relying upon the above decisions. For that ratio laid down by the Hon'ble Apex Court, there is no dispute. If the settlement is unfair or amounts to victimisation, if such question would have been raised in the petition filed by the petitioner before this Court then this Court would not have examined such question. But in such circumstances, this Court will relegate to the remedy to raise industrial dispute for challenging the validity of the settlement. Looking to the facts of this case, the petitioner workman has not challenged the settlement which is filed in the petition, on the contrary he also relied upon the settlement with a prayer to enforce it against the Bank. The challenge by the Bank is against the settlement, therefore, if the Bank having a real challenge or real grievance then they

should have to raise industrial dispute under the machinery of the Industrial Disputes Act, 1947 and to get the reference for adjudication whether settlement is legal and valid or not. Under the provisions of the Industrial Disputes Act, there is no bar to raise the industrial dispute by the employer. The Union having a right to raise dispute. Similarly, employer is also having right to raise dispute under the provisions of the Act. This being an answer to the Bank, contention relied upon in this judgement of the supreme Court reported in AIR 2000 SC 1206 (supra) why the Bank has not raised industrial dispute for challenging the settlement in question for getting reference which is required to be adjudicated by the Industrial Tribunal or Labour Court. Therefore, in this case, the challenge is not raised by the petitioner but it has been raised by the respondent-Bank so this Court has considered the prayer made in the petition. Merely raising the objection against the settlement, the settlement itself cannot be considered to be invalid. Therefore, this judgement is not helpful to the Bank when Bank has not challenged the settlement by raising industrial dispute under the machinery of the Act and to refer for adjudication to the Tribunal. No such efforts have been made by the Bank after the letter addressed to the Conciliation Officer on 1.11.1993 though 10 years have passed. Therefore, as regards the ratio laid down by the Hon'ble Apex Court, this Court could not and should not have any dispute but in the facts and circumstances of the present case, it would not apply and therefore, it is also not helpful to Mr. Patel to emphasize his contention raised before this Court.

10. It is made clear at this juncture that except the above submissions made by Mr. Patel and relying upon these two decisions referred above, no other contention has been raised by Mr. Patel and no other authority has been relied upon by Mr. Patel before this Court.

11. Learned advocate Ms. Krina Thakkar appearing on behalf of the petitioner has relied upon the settlement which is considered to be legal and valid. She requested that it should be in force since the workman is out of job since 1988. She also submitted that after a period of about more than 10 years the contention which has been raised by the respondent-Bank is invalid because the settlement is signed by the authorised representative of the Bank. She also submitted that the binding effect of the settlement under Section 12(3) of the Act is like an award which can be enforced by this Court against the respondent Bank. She also submitted that more than 10

years have passed, this settlement is not challenged so far by the Bank either in higher forum or by way of raising dispute under the machinery of the Act. Therefore, her request is that the petition may be allowed with a direction against the respondent Bank to enforce the settlement with all consequential benefits flowing from the Settlement.

12. I have considered the submissions made by all the learned advocates appearing for the parties. The question is that what is the effect of the settlement arrived at between the parties under Section 12(3) of the Act. In the Act, two types of settlements are covered. The settlement under Section 2(p) of the Act is defined as under:

> "2(p) 'Settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workman arrived at otherwise than in the course proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."

> "12(3) If a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute."

The settlement which has been produced by the petitioner (Annexure-A page 12) is signed by the Officer in staff department who is an authorised representative of the management and two witnesses in the presence of the conciliation officer. It is not a dispute raised by the Bank that under Section 12(3) this settlement is not forwarded to the appropriate Government by the Conciliation Officer. No such contention is raised even in reply. In reply, only one contention is that under rule 58 (2), signature is required of the authorised person of the employer and this settlement was not signed by the authorised person, therefore, it is bad. Except that, no other contention has been raised. Therefore, this settlement is signed by the officer of the Bank who

is authorised by letter dated 17.12.1991 which is at page 48 addressed to the respondent No.1 by the Regional Manager, Regional Office, Rajkot. Therefore, signature of Mr. Shinde in the settlement has been authorised by the Regional Manager. In the authority at page 48, not limited but, it is open to Mr. Shinde to appear in the conciliation proceedings on behalf of the Bank and to act as an authorised representative of the management. Therefore, from the authority itself, there is nothing adverse to and curtail the right of Mr. Shinde to sign the settlement. Therefore, settlement has been signed by the respective parties and it binds to the parties and it having the legal effect like an award. It is also necessary to note that in the settlement, the compliance report is required to be submitted by the Bank on or before 18.3.1992. No letter has been addressed to the Conciliation Officer by the Bank prior to 18.3.1992 that this settlement is bad as the authorized officer has not signed and Mr. Shinde is not authorized to sign the settlement. In light of this, provision under Section 18(3) of the Act is also relied upon which is quoted as under:

"18(3)
(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Cl.(a) or Cl.(b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in Cl.(a) or Cl.(b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

The effect of this Section when the settlement arrived at during the course of conciliation proceedings under the Act which has become enforceable shall be binding on all parties to the dispute where a party referred to Cl.(a) and Cl.(c) is an employer his heirs

successors or assigns in respect to the establishment to which the dispute relates. Meaning thereby, that it bind to the respondent Bank. Once Mr. Shinde who has signed the settlement being an authorised representative of the Management. Then, this give a further effect to become enforceable and shall be binding to the employer.

The settlement in question was recorded by the Conciliation Officer while exercising the powers under section 12(3) of the Industrial Disputes Act, 1947. It is necessary to have the understanding of section 12 of the Industrial Disputes Act, 1947 for considering the binding effect of the settlement arrived at during the course of conciliation proceedings by the Conciliation Officer under section 12 (3) of the Industrial Disputes Act, 1947. A settlement under section 12(3) of the Industrial Disputes Act, 1947 is having effect and it binds the parties like an award. In this respect, this section is different from section 11 which deals with the procedure and powers of conciliation officers besides other authorities. Sub section (1) makes conciliation proceedings compulsory where the dispute referse to a public utility concern and a notice under sec. 22 has been given. In all other cases, conciliation proceedings have been made optional at the discretiono f the conciliation officer. Sub section (2) requires that, without delay, the conciliation officer shall investigate the dispute and all matters relating thereto, with a view to bringing about a settlement. He may also do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. Where the conciliation officer succeeds in bringing about a settlement, sub section (3) requires him to make a report to the appropriate Government or its authorised official together with a memorandum of settlement signed by the parties to the dispute. The above provisions suggest that the conciliation officer seeks to do nothing more or better than offer assistance to both the parties to come to a settlement. A settlement which can be said to have been arrived at in the course of conciliation proceedings has, therefore, not only to be arrived at during the time the conciliation proceedings are pending, but has also to be arrived at with the assistance of the conciliation officer and with his concurrence. If the efforts to bring about settlement fail, then, sub section (4) requires that the conciliation officer should make a report to the appropriate Government accordingly. While making such report, he is to give a full statement of facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived

at. his requirement is rather important, because, where the conciliation efforts fail, the appropriate Government has to consider whether the dispute should be referred to an adjudicating authority or not. That is why the appropriate Government needs to be in possession of all the relevant facts together with the reasons which, in the opinion of the conciliation officer, led to the failure of the conciliation efforts.It is provided as per sub section (5) hat if the appropriate Government decides not to make a reference, it must record and communicate to the parties concerned its reasons therefor. Sub section (6) requires that a report under this sub section shall be submitted within fourteen days of the commencement of the conciliation proceedings, or within such shorter period as may be fixed by the appropriate Government. The proviso to this sub section permits extension of the aforesaid period by such period or periods as may be agreed upon in writing by all the parties subject to the approval of the conciliation officer.

Sub section (3) of section 12 of the Industrial Disputes Act, 1947 provides that if a settlement of the dispute or of any of the matters in dispute is arrived at in the course of conciliation proceedings, the conciliation officer shall send a report thereof to the Government together with a memorandum of the settlement signed by the parties to the dispute. Now, sub section (1) and a(3) of section 18 specify the parties bound by bipartite and conciliation settlements and section 19(3) specifies the period for which a settlement shall be binding. In view of these provisions, it is to be examined whether a matter in respect of which a settlement has been arrived at in the course of conciliation proceedings can be the subject matter of further conciliation proceedings under section 12, or a reference under section 10.

13. The Apex Court has considered the effect of Section 12(3) of the Act a settlement which arrived before the conciliation officer. The view taken by the Apex Court in case of P.VIRUDHACHALAM AND OTHERS V. THE MANAGEMENT OF LOTUS MILLS AND ANOTHER, 1998 AIR SCW 145. The relevant observations made in para 8 are quoted as under:

"the aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under

Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an Arbitration Award. They all stand on par. It is easy to visualise that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would become settlements contemplated by Sections 2(p) read with Section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlements necessarily are based on written agreements between the parties. It is impossible to accept the submission of learned Counsel for the appellants that settlements between the parties are different from agreements between the parties. It is trite to observe that all settlements must be based on written agreements and such written agreements get embedded in settlements. But all agreements may not necessarily be settlements till the aforesaid procedure giving them status of such settlements gets followed. In other words, under the scheme of the Act, all settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to have binding effect as provided under Section 18(1) or (3) if the necessary procedure for giving them such status is not followed in given cases. On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on 5.5.1980 between respondent No.1-Management on the one hand and the four out of 5 unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining

> workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding to even future workmen as laid down by Section 18(3)(d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act."

The Apex Court has observed and come to the conclusion that considering the relevant provisions of Section 12(3) of the Act leave no room for doubt once a written settlement is arrived and during the conciliation proceedings such settlement is has a binding effect not only on the signatories but also on all parties to the industrial dispute which would cover the entire body of workmen not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an Arbitration Award. They all stand on par. It is easy to visualise that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. It is also observed that; on the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on 5.5.1980 between respondent No.1-Management on the one hand and the four out of 5 unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement.

14. If the settlement arrived under Section 12(3) of the Act and if the management is taking the contrary view and to issue any letter or circular for not to implement the settlement under Section 12(3) of the Act such circular has been challenged by the union before the High Court and the High Court has set aside such circular which found to be contrary to the settlement under Section 12(3) of the Act. This question has been examined by the Division Bench of Madras High Court in the case of TIRUCHIRAPALLI HIRUDAYAPURAM CO-OPERATIVE BANK EMPLOYEES UNION ETC, ETC, V. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, TIRUCHIRAPALLI ETC, ETC, 1992(1)

LLJ 747. The facts of this reported decision are necessary where, in the settlements, the Cooperative societies were represented by the office bearers of the elected bodies who were in charge of the management of the co-operative societies. Only subsequently, the elected bodies have been dislodged and special officers have come into the picture. The contesting respondents raise certain queries concerning the propriety and validity of the settlements, but those queries are besides the provisions of the Act and they are in the other fields. It is claimed that the settlements were arrived at, in derogation of the specific instructions adumbrated in the circulars issued by the concerned Registrars under the Tamil Nadu Co-operative Societies Act 30 of 1983, hereinafter referred to as Act 30 of 1983. A stand is also taken that these settlements are the result of collusion between those who represented the cause of the management of the Societies and those who represented the cause of the employees. It is further contended that the settlements were not conducive to the financial interests of the Co-operative Societies and if they are to be implemented, they will undermine the financial stability of the Cooperative Societies. There is also a contention raised that the settlements are derogatory to the Byelaws of the Co-operative Societies. What did happen in the present cases is that by a stroke of pen, by the issuance of the proceedings impugned in the writ petition, there is an endeavour to unilaterally nullify the settlements and ignore them. It would have been a different matter if the respondents have taken up cudgels by resorting to any process of law that may be available to them to achieve this end. That they have not done. It is true that at the relevant point of time when the settlements were arrived at, the Societies were manned by elected bodies and those office-bearers of the elected bodies represented the cause of the management of the Co-operative Societies in arriving at the settlements. There has been a subsequent change by the Tamil Nadu Co-operative Societies (Appointment of Special Officers) Act 30 of 1991 coming into force and the Special Officers getting hold of the management of the Co-operative Societies. But the tenure of the settlements has not yet lapsed and this is the admitted position. There is no gainsaying that the settlements arrived at shall be binding on the successors-in-office of the Co-operative Societies. It will not be proper for this Court in the present proceedings to express any opinion with reference to the factors put forth by the respondents as vitiating the settlements and give an adjudication over them. We are only called upon to go into the legal propriety of the proceedings impugned in

these cases whereby the settlements are sought to be nullified. Whatever be the nature of the factors alleged as vitiating the settlements, can the respondents by the proceedings impugned, give an adjudication over the settlements and unilaterally nullify them, is the question that alone comes up for consideration by us. suffice it to point out that what the respondents have done is not only unorthodox, but also not fitting in with any precept of law. The respondents cannot by issuing the proceedings impugned, adjudicate over the settlements and unilaterally set at naught the settlements apparently fitting in with the provisions of Act. There is a total lack of jurisdiction and competency in law in this regard. This factor alone, in our view, should weigh with us for purposes of deciding these cases. There is no need for us to travel beyond this.

Ultimately, the Division Bench of Madras High Court has observed in paragraph 3 as under:

"Learned counsel for the petitioners were anxious to suggest that the contesting respondents are not without remedy and they were suggesting different remedies. Mr. K.Chandru, learned counsel appearing for the petitioners in some of the writ petitions, would submit that the process under the Act could not be resorted to and only there could be an independent approach to this Court under Article 226 of the Constitution of India. In contrast, Mr. A.L.Somayaji, learned counsel appearing for the petitioners in some of the writ petitions would submit that the process under the Act is not excluded in a contingency like the present one. We make it clear that we are not in the field of making any suggestion as to what exactly is the process in law the respondents should resort to, to delete the settlements, if there are grounds justifying the same. It is sufficient if we take note that by the impugned proceedings that result could not be achieved. The impugned proceedings are incompetent and without jurisdiction. When we view the question from the above angle, we have no other alternative, but to countenance the grievances of the petitioners in these cases. Accordingly, in this batch of writ petitions, we make the following order: The proceedings impugned in the writ petitions in so far as the purport to nullify or annul the settlements arrived at under the Act shall not be enforced to the prejudice of the petitioners. We make no

order as to costs. We make it clear that we have only frowned upon the impugned proceedings in so far as they by themselves ventured to nullify or annul the settlements under the Act. It is certainly open to the authorities concerned to resort to the appropriate process available to them in law to achieve their end with regard to their grievances over the settlements."

In view of these observations made by the Division Bench of the Madras High Court wherein the settlement has been challenged by the employer on the ground that it was the result of collusion between the parties, it not binding to the successor. Ultimately that circular has been set aside by the Division Bench of the Madras High Court challenging the settlement arrived under Section 12(3) of the Act on the ground that the said settlement is not challenged by the respondent Society so far in any higher forum or the machinery under the provisions of the Act, meaning thereby, the settlement is remained binding to the successor under Section 18 (3) of the Act.

16. Looking to the facts of the Division Bench of the Madras High Court and considering the factual aspects of the present case, here the settlement is arrived between the parties on 19.12.1991 in the presence of the Conciliation Officer who has signed the settlement. The binding effect of Section 12(3) of the Act on the settlement is like an award which can be enforced by the Court when the same is not implemented by the respondent Bank. Merely raising the contention by the employer that the person who has signed the settlement on their behalf is not an authorised person, cannot to be taken into account on the ground that, if that is so, then some steps must have to be taken by the Bank either to challenge the settlement in higher forum or to raise industrial dispute by the employer to cancel the settlement or to set aside the settlement under the machinery of the Act. There is no bar under the provisions of the Act for raising the industrial dispute by the employer, it is open for both the employer and the employee. Therefore, according to my opinion, in absence of the effective steps from 1991 onwards and last letter dated 1.11.1993 addressed to the respondent No.1 by the Bank, no effective steps have been taken, therefore, this settlement is binding to the Bank. Authority letter at page 48 dated 17.12.1991 is very clear, not restricted to only for appearance but it may act on behalf of the Bank while appearing before the Conciliation Officer. There is no need to have any person or special authority to

sign the settlement once the Bank has authorised the representative Mr. Shinde to appear before the Conciliation Officer in respect to the proceedings pending before him on behalf of the Bank is enough and, therefore, the signature which has been made by Mr. Shinde on the settlement before the Conciliation Officer in presence of two witnesses now is only taking the stand that this signature is not by the authorised person, cannot be nullified the effect of such settlement by taking merely such defence in the reply. Therefore, according to my opinion, the challenge which is against the settlement by the respondent Bank cannot be accepted on the ground that settlement is signed by the Conciliation Officer having binding effect so long the settlement remained in existence and it is not legally set aside by any higher forum under the machinery of the Act. Same is binding to the respondent Bank. There is also a provision under Section 19 which give powers to the employer to terminate the settlement after giving notice as prescribed under Section 19. No such efforts have been made by the respondent Bank. Therefore, the settlement which has been arrived at between the parties recorded by the Conciliation Officer dated 19.12.1991 in presence of two witnesses is legal and valid and contention which has been raised by the respondent Bank is not accepted and therefore, it is the duty of the respondent Bank to implement the settlement and this Court having power to direct the respondent Bank who is a State authority to enforce the settlement and to implement the same within some reasonable time.

It may be stated that there is no specific provision in the Act which lays down that an industrial dispute cannot be raised with regard to matter which is the subject of a settlement under section 12 read with section 19(2). What this court has to consider is the effect of the legislature providing that under section 19(2) a settlement arrived at in the course of conciliation shall be binding for such period as is agreed upon by the parties and if no such period is agreed upon, for a period of six months and that section also provides for a proper notice being given terminating the settlement after the expiry of the period mentioned in the earlier part of the section. When the legislature provides for a particular agreement being binding upon the parties to an industrial dispute, it clearly intends that there is industrial peace with regard to the subject matter of agreement for the durationof that agreement and it is obvious that if there is to be industrial peace for the period contemplated, then neither party to that settlement can be allowed to raise an industrial dispute

with regard to that settlement. As stated earlier, an award is not the result of an agreement between the parties. It is something superimposed upon them by the force majeure of law. But a settlement is a purely voluntary matter and parties may or may not arrive at a settlement but when the parties do arrive at a settlement the law gives to it a greater sanctity than it gives to an award and, therefore, the industrial law does not contemplate any interference with the finality of the settlement and it compels the settlement to run on for the period mentioned in the settlement itself and neither party is permitted to challenge that settlement.

A Conciliation Officer while exercising the powers under section 12(3) of the ID Act, is acting in a judicial or quasi judicial manner. No doubt there may be opposing parties and various points at issue between them but the conciliation officer is not competet to hear or decide any of them. All he can do is to try the persuade the parties to come to a fair and amicable settlement. The Act is empowering him to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of disputes. The duties of the conciliationofficer are to induce or persuade; conciliation officer has no power to decide anything at all. He can appeal to the good sense of the parties before him or to their sense of patriotism or to their self interest. Within reasonable limits he may remonstrate with them. The Conciliation officer may invite them to take into consideration the temper of public opinion or the hardships that the public may be put to. In fact, the matter is left entirely to his resourcefulness and powers of persuasiveness. How the discharge of such duties can be regarded as quasi judicial or judicial ? It is also difficult to see how the circumstance that the COnciliation Officer has sgned at the foot of the agreement and the agreement purports to be one under section 12(3) of the ID Act can be regarded as any kind of order or decision. It is not, theefore, susceptible to correction by certiorari.

A Settlement arrived at in the course of conciliation proceedings is having greater sanctity as itis one arrived at with the assistance and concurrance of the conciliation officer who invites all parties interested in the dispute for conciliation and persuades the participating parties to reach a just and reasonable decision to safeguard the interest ofall concerned after due deliberation and proper consideration of the pros and cons of the issues involved. The significance of such a settlement is that it bears the stampof approval of the

Conciliation Officer over the consensus resulting fromsuch discussions so as to justify its binding force not only on the employees in service at the time when it is arrived at but also on those who are to enter service on a future date, as long as the settlement remains in force and effective.

Section 12 makes a distinction between a settlement arrived at in the course of conciliation and a settlement arrived arrived at otherwise than in the course of conciliation proceedings. The legal effects of both are not identical. Under section 18(3) of the Act a settlement arrived at in course of the conciliation proceedings will be binding on all parties to the industrialdispute referred to inclause (a) to (d) of section 18(3) which in the case of workmen will include all persons who are employed in the establishment or part of the establishment to which the dispute relates on the date of the dispute and all persons who subsequently become employed in the establishment or part. However, a settlement arrived at between the management and workmenotherwise than in course of the conciliationproceedings will bind only the actual parties to the settlement in accordance with section 18(1) of the Act. Bare perusal of section 12 makes it clear that once a written settlement is arrived at during the conciliation proceedings such settlement under section12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrialdispute which would cover the entire body of workmen, not only the existing workmen but also future workmen. Such a settlement during conciliationp roceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an arbitration award . They all stand on a par. Under the Scheme of the Industrial Disputes Act, all the settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to have inding effect as provided under section 18(1) or 18(3) if necessary procedure for giving them such status is not followed in given cases. Unless the settlement is brought about with the assistance and concurrance of the Conciliation Officer, it will not have the effect of a settlement under section 12(3) of the ID Act. In the instant case, the settlement in question has been brought about with the assistance and concurrance of the Conciliation Officer, it will be having the effect of a settlement under section 12(3) of the ID Act.

I have considered the scheme of section 12 of the ID Act, 1947. It is not the case of the present respondent bank that the settlement has not been arrived at between the parties during the course of conciliation proceedings before the conciliation officer. It is also not the case of the bank that such settlement has not been approved or recorded by the conciliation officer. It is alson ot the case of the respondent bank that the said settlement has not been brought about with the assistance and concurrance of the conciliation officer. It is also not disputed by the bank that the authorized representative of the bank Mr. Shinde has signed the settlement in presence of two witnesses and the petitioner, before the Conciliation Officer. It is also an admitted fact that the terms of settlement means Memorandum of Agreement or settlement is in FOrm - H provided under the ID Act, 1947.It is also not in dispute that the said settlement has been forwarded to the appropriate Government as required under the relevant rules and form H of the ID Act, 1947. Meaning thereby, whole settlement has been arrived at between the parties during the course of conciliation proceedings before the conciliation officer and the said settlement is, therefore, completely in accordance withl aw and there is no lacuna or any defect in the said settlement and that is also not the case of the respondent bank. The bank is having only one contention that the officer of the Bank namely Mr. Shinde was authorized to appear on behalf of the bank and submit the documents but the said officer was having no authority whatsoever to negotiate or sign any settlement for and on behalf of the respondent bank as per the authorization letter at page 48 dated 17th December, 1991. If the case of the respondent bank is taken into account that some coercive measures and pressure tactics were adopted by the Conciliation Officer - respondent No.1, then, it was necessary for him to immediately approach the highest authority of the respondent bank and to disclose the true and correct facts before the highest authority of the bank but that has not been done. It is also not the case of the respondent bank that after the settlement was signed on 19th December, 1991, immediately or even thereafter, Mr. Shinde had approached the highest authority disclosing these facts about the coercive measures and force tactics adopted by the Conciliation Officer. Mr. Shinde remained silent in that regard for sufficient period and these facts as alleged by the respondent bank were not brought to the notice of the highest authority of the bank immediately or within some reasonable period. Now, before appreciating this contention of the respondent bank, it should be appreciated that Mr. Shinde is not an

ordinary clerk or supervisor. Mr. Shinde is also a responsible officer of the bank who was duly authorizied by the bank to appear in the conciliation proceedings. Therefore, naturally, he was responsible officer deputed by the bank to appear in the conciliation proceedings before the conciliation officer. If the bank was having any grievance about coercive measures or force by rsepondent no.1 for entering into the said settlement, then, the concerned officer or the bank ought to have filed criminal complaint against the first respondent or ought to have written a letter before the highest authority of the first respondent immediately thereafter or within some reasonable period thereafter but that has also not been done by the officer of the respondent Bank Mr. Shinde or by the bank itself. Meaning thereby and considering the conduct of the officer of the bank namely Mr. Shinde, certain things are required to be presumed against the bank for not believing the case of the respondent bank.It is also necessary to consider that in all five letters were written by the petitioner to the respondent bank to which no reply has been given by the bank. Xerox copies of the acknowledge including RPAD Slips have been produced on the record of this petition and it is not the case of the respondent bank that the said letters were not received by the respondent bank and that is how the bank has not replied the said letters. From the record of the present petition, it is clear that the respondent bank has not replied the said letters including the letter dated 1st November, 1993 which is at page 53, addressed to the first respondent by the bank. Admittedly, copy of the said letter has not been served upon the petitioner. Three contentions have been raised by the learned advocate Mr. K.M. Patel on behalf of the respondent bank. One is to the effect that the petitioner is having alternative effective remedy for implementation of the settlement in question which has been availed by the petitioner but that recovery application has been dismissed for default and,therefore,this court may not exercise the powers under Article 226 of the Constitutionof India. Second one is to the effect that this court should not exercise the extra ordinary jurisdiction under Article 226 of the Constitution of India as the petition involves disputed questions of facts and law which cannot be appropriately dealt with and decided by this court while exercising extra ordinary jurisdiction under Art.226 of the COnstitution. The third and the last contention raised by the learned advocate Mr. Patel is to the effct that while exercising the powers under Article 226/227 of the Constitution of India, legality,validity and the propriety of the settlement cannot be examined by this

COurt. The answer to the contentions raised by the learned advocat Mr. Patelis simple that there is no disputed questions of fact involved in the present petition. Existence of the settlement has not beendisputed by the bank. Almost all the facts are not in dispute. This Court is not examining the legality, validity and propriety of the settlement recorded before the conciliation officer in conciliation proceedings under section 12(3) of the ID Act, 1947. This court, in substance, is examining as to whether the contention raised by the respondent bank that the authorized officer has not signed the settlement is legal and valid or not. This Court is, thus, examining the contention raised by the bank as to whether such contention is legal and valid or not. Say of Mr. Shinde, if believed, then, he is required to be supported by two witnesses who had signed in the said settlement in presence of the officer Mr. Shinde. Thereis no affidavit or any letter of either of the said two witnesses sent to respondent no.1 which would mean that after signing the settlement voluntarily with full application of mind as a result of the persuations by the conciliation officer. Subsequently, Mr. Shinde wants to save his skin and, therefore, he is narrating false and incorrect facts before the highest authority when the explanation was called for.This conduct of Mr. Shinde is apparently doubtful and it appears that such a story has been cooked up and put up by him before the respondent bank with a view to save himself from the harsh action from the bank. If the story submitted by Mr. Shinde would have been correct and not cooked up, then, as a normal reaction, he would have immediately filed criminal prosecution against the respondent no.1 or appropriate proceedings would have been filed immediatly by the respondent bank for challenging the settlement in question but that has not been done either by the bank or Mr. Shinde and, therefore, according to my opinion, sanctity of the said settlement arrived at under section 12(3) of the ID Act, 1947 is greater in spirit and it is having effect like an award which binds the bank which is an authority under Article 12 of the Constitution of India. Now the bank is raising such contentions which are appearing untenable considering the conduct of Mr. Shinde as a story cooked up by Mr. Shinde and Bank and, therefore, this court is not accepting the contentions raised by Mr. Shinde with a clear finding that the contentions are not legally tenable and valid according to law and, therefore, the settlement in question is perfectly all right, legal and valid, just and fair having legal and binding effect upon the bank.

In a general law, if any settlement arrived at between the parties out side the court and if that settlement is placed before the court, same is being recorded and approved by the court after verifying the facts and then the court is passing orders for acceptance of such settlement and thereafter, such settlement is becoming an order of the court and the court is generally disposing of the matter in terms of the settlement by directing the parties to the said settlement to act in terms of the settlement. Similarly, settlement arrived at between the parties during the conciliation proceedings which has been recorded and approved by the conciliation officer is becoming part of the order or decision of the respondent no.1 having legal and binding effect upon the respective parties. Meaning thereby, it is binding to the parties having legal force to implement such settlement by the parties. In such circumstances, such settlement is not remaining merely Memorandum of Understanding but it is having legal sanctity in the hands of law. Similar question has been examined by the apex court in the matter of SALKIA BUSINESSMEN'S ASSOCIATION V. HOWRAH MUNICIPAL CORPORATION reported in 2001 AIR SCW 2922. In para 8 of the said decision, it has been observed by the Hon'ble apex court as under:

"8. We have carefully considered the submissions of the learned senior counsel on either side. The learned single Judge as well as the Division Bench of the High Court have not only over simlified the matter but seem to have gone on an errand, carried away by some need to balance hypothetical public interest, when the real and only question to be considered was as to whether the respondent authorities are bound by the orders passed by the Court on the basis of the compromise memorandum, and whether the proposed move on heir part did not constitute flagrant violation of the orders of Court - very much binding on both parties. The High Court failed to do justice to its own orders. If Courts are not to honour and implement their own orders, and encourage party litigants - be they public authorities, to invest methods of their own to short circuit and give a go-bye to the obligations and liabilities incurred by them under orders of the Court - the rule of law will certainly become a casualty in the process - a costly consequence to be jealously averted by all and at any rate by the highest Courts in Sates in the Country. It does not, in our view, require any extraordinary exercise to hold that the

> memorandum and terms of the compromise in this case became part of the orders of the High Court itself when the earlier writ petition was finally disposed of on 13.2.191 in the terms noticed supra notwithstanding that there was no verbatim reproduction of the same in the order. The orders passed in this regard admits of no doubt or give any scope for controversy. While so, it is beyond ones comprehension as to how it could have been viewed as a matter of mere contract between parties and under that pretext absolve itself of the responsibility to enforce it, except by doing violence to the terms thereof in letter and spirit. As long as the earlier order dated 13.2.91 stood, it was not permissible to go behind the same to ascertain the substance of it or nature of compliance when the manner, mode and place of compliance had already been stipulated with meticulous care and detail in the order itself. The said decision was also not made to depend upon any contingencies beyond the control of parties in the earlier proceedings."

The apex court has observed that if the authority failed to do justice to its own orders and if the authorities are not honouring, implementing and respecting its own orders, and encourage party litigants - be they public authorities, to invent methods of their own to short circuit and give a go-bye to the obligations and liabilities incurred by them under orders of the Court - the rule of law will certainly become a casualty in the process, a costly consequence to be jealously averted by all and at any rate by the highest Courts in Sates in the Country. Similarly, in the facts of the present case also, respondent no.1 is a statutory authority entering into a settlement in the conciliation proceedings in the dispute raised by the petitioner. After issue of the notice to the respondent bank, reply was filed on 20th October,1989 ad thereafter, Mr. Shinde was authorized to appear in the conciliation proceedings by the authority letter dated 17th December, 1991 which is at page 48 and during the conciliation proceedings, after persuations by the conciliation officer and his interventions, Mr. Shinde on behalf of the bank agreed to reinstate the petitioner without back wages for the intervening period; such terms of settlement were reduced in writing in presence of Mr. Shinde and two witnesses and then it was recored and approved by the conciliation officer being a fair, just and bona fide settlement between the parties and, therefore, it becomes an award and, therefore, it is the duty of the court to enforce

such settlement as an award or an order of the conciliation officer and in such circumstances, while exercising the extra ordinary powers under Article 226/227 of the Constitution of India, it is the duty of this court to protect the legal rights of the workman flowing from such settlement arrived at in the course of conciliation proceedings before the conciliation officer which has been accepted by the bank and recognized by the conciliation officer while recording and approving the settlement under section 12(3) of the ID Act, 1947.

While exercising the powers under Article 226 of the Constitution of India, this Court can issue a writ of mandamus against a party or a person who is responsible and having liability under the settlement to implement the same as an award or settlement having binding effect. This question was examined by the Punjab & Haryana High Court in the matter of JAGDISH CHAND V. LABOUR COMMISSIONER AND OTHERS reported in 1995 II LLJ 410. In para 16 of the said decision, it has been observed by the Punjab & Haryana High Court as under:

"16. Having given this wider meaning to the term "life", the Courts cannot shirk from its responsibility to protect the right to livelihood of the individuals. The Court cannot shut its eyes from the reality that in our country public employment is an important source of livelihood to individuals and the service jurisprudence which has developed during last four decades has perhaps no parallel in the world. If the Courts have safeguarded the right to speech and expression, the right to business, the right to property, the right to form association, it cannot be oblivious and ignorant of the rights of millions who are deprived of the source of livelihood by arbitrary, capricious and whimsical actions of the State and its agencies. The Court cannot throw out a petition merely because it has been filed by a small man by declaring that he has an alternative remedy. So called sacrosanct rights which are treated as basic rights even by Universal Declaration of Human Rights of 1948, will remain mere paper rights if the man is not a in a position to sustain himself and his family. It is, therefore, of vital importance for the Court as well as for the citizens that right to livelihood has to be protected. In the words of Chinnappa Reddy, J, [LIC of India v. Escorts Ltd., and others [1986] I SCC 264, the Courts will have to devote more time and attention to

the little citizens of this country. His Lordships started the decision in that case with the following words :-

"Problems of high finance and broad fiscal policy which truly are not and cannot be the province of the Court for the very simple reason that we lack the necessary expertise and, which in any case, are none of our business are sought to be transformed into questions involving broad legal principles in order to make them concern of the Court. Similarly, what may be called the "political" process of "Corporate Democracy" are sought to be subjected to investigation by us by invoking the principle of Rule of Law, with emphasis on the rule against arbitrary Station action. An expose of the facts of the present case will reveal how much legal ingenuity may achieve by way of the persuading courts, ingenuously, to treat the variegated problems of the world of finance, as litigable public right questions. Courts of Justice are well tuned to distress signals against arbitrary action. So corporate giants do not hesitate to rush to us with cries for justice. The Court room becomes their battle ground and corporate battles are fought under the attractive banners of justice, fair play and the public interest. We do no deny the right of corporate giants to seek out aid as well as any Lilliputian farm Labour or pavement dweller though we certainly would prefer to devote more of our time and attention to the latter. We recognize that out of the dust of the battles of giants occasionally emerge some new principles, worth the while. That is how the law has been progressing until recently. But not so now. Public interest litigation and public assisted litigation are today taking over many unexplored fields and the dumb are finding their voice."

Keeping in view the facts and circumstances of the present case and the observations made by the Punjab

and Haryana High Court in the aforesaid decision, this court has examined the question as to whether the petition should be considered on merits or should be disposed of on the ground of availability of an alternative remedy as contended by the respondent bank. The question has been examined in light of the fact that if a workman or the petitioner may have an alternative remedy for implementation of the award but the High Court has also to bear in mind that the rule of not to entertain the petitionunder Article 226 of the Constitution in case where equally efficacious alternative remedy is available is a rule of self imposed restriction and rule of caution. As such, it is not a rule of law nor a rule of thumb which can be applied in each and every case to non suit the litigant irrespective of the nature of his grievance. Relevant observations made by the P. & H. High Court in the aforesaid decision in that regard are reproduced as under:

"13. Here, I may also take note of the general principles to be applied by the High Courts for exercise of jurisdiction under Article 226 of the Constitution. The Court has to bear in mind that the rule of not entertaining the writ petition under Article 226 in a case where equally efficacious alternative remedy is available is a rule of self imposed restraint and a rule of caution; it is not a rule of law nor it is rule of thumb, which can be applied in every case to non suit a petitioner irrespective of the nature of his grievance. Therefore, whenever an objection is raised by a respondent to the maintainability / entertainability of alternative remedy, the Court must find out as to what is the nature of grievance made by the petitioner and what type of remedy is available to him. The Court cannot be too oblivious to its constitutional duty towards the citizens. Time has come when the people have started feeling that they have been led down by the two organs of the State and they look upon the Courts with a ray of hope. Common man's faith in the system of dispensation of justice still exists. However, failure of the Courts to undo injustice done to the citizens will shake the confidence of the people. The Courts will have to be more vigilant in the discharge of their duty to safeguard the legal and fundamental rights of the individual. The degree of anxiousness demonstrated in the judgments of the Courts to protect the right to property, the right to freedom of speech and

expression, the right to trade and business will have to be reflected with greater sense of urgency for protecting the right of life and livelihood. The proliferation of the Government activities has affected the lives of people in a larger volume than it used to be in the pre independence era and for ten years after independence. Enlargement of the field of State activities has resulted into its direct impact on the lives of the people. Recent times have been an accelerated increase of arbitrariness in the State actions. The worst is that the public authorities and particularly the administrative authorities have developed an attitude of total insensitiveness towards the needs of the people. This has naturally compelled the people to look upon the Courts for solace and redressal of injustice. No doubt, this has led to an immense increase in the volume of litigation but that should not threaten the courts and there is no need to accept the specious argument or evolve methodologies to non suit those who are really aggrieved by State action or arbitrariness of public authorities. The Courts have to guard themselves against the allegation of being protector of haves in the society. Denial of relief to the poor and small man on the grounds like availability of alternative remedy will not do any good to the system but will encourage people like Mr.P.Shiv Shankar who criticized the Courts by saying :-

"Madhadhipatis like Keshvanda and Zamindars like Golaknath evoked a sympathetic chord nowhere in the whole country except the Supreme Court of India. And the bank magnates, the representatives of the elitist culture of this country ably supported by industrialists, the beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in Cooper's case AIR 1970 SC 564, anti social elements i.e. FERA violators, bride burners and a whole horde or reactionaries have found their haven in the Supreme Court," [Reference to P.N.Dua V. P.Shiv Shankar, AIR 1988 SC 1208]."

The settlement is dated 19th December, 1991. As per the terms of the said settlement, it was required to

be implemented by the respondent bank on or before 18thMarch, 1992. It is required to be noted that the petitioner workman has not been reinstated in service as per the terms of the said settlement and no back wages have been paid to the petitioner. Considering the prayers made by the petitioner , the petitioner is seeking a writ of mandamus against the bank for enforcement of the settlement. Therefore, while keeping in mind the agony of the workman that inspite of the five leters referred to above written to the bank, no response given to the petitioner by the bank and belatedly contention was raised that Mr.Shinde who had signed the settlement was not authorized to sign the settlement and that too only in the affidavit in reply filed in the present petition in the year 2002. Prior to that, these facts were not brought to the notice of the petitioner by the respondent bank because there was no replygiven by the bank to the petitioner inspite of the five letters written by the petitioner to the bank and also inspite of the pendency of this petition before this court since the date of filing of this petition in the year 1993. Not only that, copy of the letter dated 1st November, 1993 addressed by the respondent bank to the respondent no.1 has also not been served upon the petitioner. Meaning thereby, the respondent bank has kept the poor petitioner in dark for all these years and for the first time, it has come with such a plea in the reply affidavit filed before this court in the year 2002. It was for the first time brought to the notice of the petitioner in the affidavit in reply that the settlement is disputed by the bank only on the ground that the signatory to the said settlement was not authorized by the bank and, therefore, it is not binding to the bank.Thus, from 1991 to 2002 prior to the filing of reply, no dispute was raised by the bank about the same and in view of that, this court is of the view that the respondent bank is raising such contentions only with a view to deprive the petitioner from his legitimate rights flowing from the settlement. This Court is, therefore, also of the view that such contentions are after thought contentions raised only with a view to save his skin. This Court has, therefore, considered themental agony of the petitioner who has remained out of job for a period of about 12 years. This Court has considered the right of reinstatement like right of life which includes right of livelihood enshrined under Article 21 of the Constitutionof India which is something more than mere animal existence. It is not the case of the respondent bank that during this interim period, the petitioner workman was gainfully employed and, therefore, he is not entitled for the back wages for the intervening period. The petitioner was

holding the post of peon in class IV cadre and such a poor class IV employee has suffered a lot during the period of 12 years during which the settlement has not been implemented by the bank. Therefore, considering these facts and hard realities which has been suffered by the petitioner, this court is of the opinion that some effective directions by way of writ of mandamus should be issued against the respondent bank so that the respondent bank can reinstate the petitioner with continuity of service with full back wages for the intervening period from 18th March, 1992 till the actual date of his reinstatement of the petitioner by the bank. This Court is issuing such directions while keeping in view the effective implementation of the settlement in question because otherwise further dispute will be raised by the respondent bank so that the question may not arise as to what is the meaning of the implementation of the settlement. Therefore, only with a view to see that the workman petitioner is not harrassed any further and real justice is done to the petitioner, this court is issuing effective directions.

The contention raised by the learned advocate Mr. Patel that this court cannot grant any relief in favour of the petitioner cannot be accepted by this court since the contention is technical in nature devoid of any merits. Once this court is satisfied that the contention raised by the bank is not tenable in law and the settlement is legal and valid, then, as a normal rule, the petitioner is entitled for full relief irrespective of any limitation imposed upon the court. Ultimately, while administering the justice, this court cannot close its consciousnes and aliveness to the stark realities of life. If the courts will lose their efficacy, if they cannot possibly respond to the need of the society technicalities there might be manybut the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice. Such question about the powers of the court and the technicalities and to grant effective relief was examined by the Hon'ble Apex Court in the matter of MS GREWAL AND ANOTHER V. DEEP CHAND SOOD AND OTHERS reported in (2001) 8 SCC page 151. In para 27 and 28 of the said judgment, it has been observed by the Hon'ble apex court as under:

"27. The decision of this Court in D.K. Basu versus State of W.B. comes next. This decision has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating

the aggrieved to the remedies available in civil law limits stands extended since Anand,J. (as His Lordship then was) in no uncertain terms observfed; (SCC p. 439 para 45)

'The Courts have the obligations to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the o ffender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to the life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim,who may have been the breadwinner of the family.'

28. Currently, judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affection of the people has been taken note of rather seriously and the judicialconcern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse tothe old conservative doctrine of the civil court's obligation to award damages. As a matter of fact, the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the countrybut the learned Judge with his usual felicity of expression firmly established the current trend of justice oriented approach. Law courts will lose their efficacy if they cannot possibly respond to theneed of the society technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In view of the above, considering the facts and circumstances of the present case and law related to question involved in the present petition and also considering the views taken by the Apex Court and the

Punjab and Haryana High Court as well as the Madras High Court, according to my opinion, the petitioner is entitled for effective and clear relief which flows from the settlement dated 19th December, 1991 which is legal and valid in all respects.

18. In result, present petition is allowed with a direction to the respondent Nos. 2, 3 & 4 to implement the settlement (Annexure-A page 12-14) dated 19.12.1991 while reinstating the petitioner in service as Peon w.e.f. 18.3.1992 and pay all the arrears of salary including back wages of intervening period with all consequential benefits in pursuance to the settlement , available to the petitioner w.e.f. 18.3.1992 within a period of three months from the date of receipt of the copy of this order. Rule is made absolute accordingly with no order as to costs.

(H.K.Rathod,J)

Jayanti*